IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Writ Petition No.3204 of 2005

Mrs.Zabin Salim Hamja Shaikh Petitioner
Vs.
Shri A.N.Roy & ors.

Mr.U.N.Tripathi for petitioner.
Mrs.A.S.Pai, APP for State.

CORAM: B.H.MARLAPALLE & NARESH H.PATIL,JJ.

October 11, 2006.

ORAL JUDGMENT (PER B.H.MARLAPALLE,J.)

1. This petition filed under Article 226 read with Articles 21 and 22 of the Constitution challenges the detention order dated 31/10/2005 passed by the Commissioner of Police, Brihan Mumbai under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 ("the MPDA Act" for short) holding that the detenu Shri Mohamed Salim s/o Haji Hamja Shaikh @ Kalya Salim is a dangerous person within the meaning of Section 2(b-1) of the said Act. The petition has been filed by the wife of the detenu. Consequent to the impugned order of detention the detenu was taken in custody on 4/11/2005 and, therefore, the detention period of one year would expire on 3/11/2006.

2. The detention order has been passed by the State Government on 9/11/2005 and it was referred to the Advisory Board on 10/11/2005. The Advisory Board gave its opinion on 7/12/2005 and it was received on the same date by the State Government. Consequently the order was confirmed on 17/12/2005 by the State Government for a period of one year.

3. Though the order has been challenged on as many as seven grounds the following two grounds were mainly advanced before us:

(d) The petitioner says and submits that the two In-camera statements referred to in the grounds of detention and relied on by the Detaining Authority is illegal and unwarranted in view of the fact that they are false, vague and baseless. Moreover, these statements are not verified as per the requirement of law by the A.C.P. who has verified them. There are no cogent material to show that they were really verified. It is, therefore, In-camera statements in this case cannot be relied on for detention of the detenu. The order of

detention is illegal and bad in law, ought to be quashed and set aside.

(e) The petitioner says and submits that the Detaining Authority has referred to and relied on a criminal case registered against the Detenu vide C.R.No.116/2005 under Sections 326, 114 of IPC and all the documents which are placed before the Detaining Authority. The petitioner says and submits that in the abovesaid C.R. while narrating the incident the Detaining Authority has stated in para 5 of the grounds of detention that the Detenu with a sharp knife has caused cuts on the cheek and left rear side of the neck of Shri Ravi Pujari whereas the medical certificate which is placed before the Detaining Authority as the documentary evidence does not disclose the same and moreover, the Ld. Magistrate while granting bail also has observed the same. The gross variance between the averments of the Detaining Authority with the injury certificate and bail order clearly shows the total non-application of mind of the Detaining Authority. This shows the casual

and cavalier manner of passing the Order of Detention. The Order of Detention is illegal and bad in law, ought to be quashed and set aside.

4. Having considered the medical certificate, the proposal submitted to the Detaining Authority by the Sponsoring Authority, the complaint in C.R.No.116/2005 for offences punishable under Sections 326 and 114 of IPC as well as the bail order passed by the learned Metropolitan Magistrate's 9th Court at Bandra, Mumbai on 2nd September 2005, we are of the considered opinion that the second point set out as ground (e) in the petition memo and reproduced hereinabove does not require consideration from us. The alleged deficiency of not mentioning the so called injury on the cheek in the medical certificate would not affect the detention order more so when it is based on one CR and two in-camera statements. We, therefore, deem it appropriate to consider the first point raised before us, challenging the impugned order of detention.

5. The verification made by the Assistant Commissioner of Police on both in-camera statements

on the respective dates (original in Marathi) reads as under:

> "He is personally present before me on this day. When his statement was read out and explained to him, he stated that the contents thereof were true. Moreover, he observed the signature on the statement and identified the same to be his signature only.
>
> Moreover, when further enquiries were made with him, he gave his identity. He is not ready to give evidence either in the court or at any other public place openly. Moreover, I am satisfied that the fear being felt by the witness about the offender by name Mohammed Salim Haji Hamja Shaikh is true.
>
> The witness requests that his name may not be disclosed anywhere."

6. As the detenu was not familiar with Marathi language, the in-camera statement along with the verification above referred was translated in Hindi and provided to the detenu and we find that the translation is accurate. It was submitted by Mr. Tripathi, the learned counsel for the petitioner that the verification so made by the Asst. Police Commissioner does not satisfy the requirements of law as pronounced in the case of Smt. Phulwari Jagdambaprasad Pathak v. Shri R.H. Mendonca & ors. **[JT 2000 (8) SC 209]** and more particularly the following observations:

"16. Then comes the crucial question whether 'in-camera' statements of persons / witnesses can be utilised for the purpose of arriving at subjective satisfaction of the detaining authority for passing the order of detention. Our attention has not been drawn to any provision of the Act which expressly or impliedly lays down the type of material which can form the basis of a detention order under section 3 of the Act. Preventive detention measure is a harsh, but it becomes necessary in larger interest of society. It is in the nature of a precautionary measure taken for preservation of public order. The power is to be used with caution and circumspection. For the purpose of exercise of the power it is not necessary to prove to the hilt that the person concerned had committed any of the offences as stated in the Act. It is sufficient if from the material available on record the detaining authority could reasonably feel satisfied about the necessity for detention of the person concerned in order to prevent him from indulging in activities prejudicial to the

maintenance of public order. In the absence of any provision specifying the type of material which may or may not be taken into consideration by the detaining authority and keeping in view the purpose the statue is intended to achieve the power vested in the detaining authority should not be unduly restricted. It is neither possible nor advisable to catalogue the type of materials which can form the basis of a detention order under the Act. That will depend on the facts and situation of a case. Presumably, that is why the Parliament did not make any provision in the Act in that regard and left the matter to the discretion of the detaining authority. However, the facts stated in the materials relied upon should be true and should have a reasonable nexus with the purpose for which the order is passed."

7. In support of the challenge to the detention order on the ground that the verification of the in-camera statement was not in keeping with the legal requirements and, therefore, it could not have been considered and relied upon to pass the detention

order, Mr. Tripathi relied upon the following decisions of this Court:

. (i) Smt. Vijaya Raju Gupta vs. Shri R.H. Mendonca & ors. **[2001 ALL MR (Cri) 48)]** and (ii) Abdul Kayyum Shafi Mohamed Shaikh v. M.N. Singh & ors. **[2002 ALL MR (Cri) 1729]**.

8. We have verified from the original record as produced before us by Mrs.Pai, the learned APP that (a) the verification made by the Asst. Commissioner of Police and as reproduced hereinabove is the same as in the original statement, (b) the proposal submitted to the Detaining Authority was prepared and forwarded by the Deputy Commissioner of Police, (c) the said proposal was based on the two in-camera statements as well as the verification made by the Asst. Commissioner of Police and (d) the verification so made by the Asst. Commissioner of Police remained silent about the truthfulness of the incidents which are covered by the said in-camera statements. The verification has dealt with the identification of the complainants, the contents therein having been written as disclosed by the complainants, the complainants' signatures, the

complainants having understood the contents of the statement as recorded by the Police Inspector and the satisfaction of the Asst. Commissioner of Police that the complainants were not willing to disclose their identity and if they had disclosed it, there would be danger to their life. The verification required to be done by the Senior Police Officer of such in-camera statements requires an additional condition to be met viz. the satisfaction of the verifying officer regarding the truthfulness of the incident that was claimed to have occurred and as disclosed by the respective complainants i.e. Witness "A" and Witness "B" in the instant case. Such a verification ensures the Senior Police Officer's subjective satisfaction that the statement as recorded by the Police Inspector or Senior Police Inspector was genuine, the identity of the witness was established and the incidents disclosed were found to be truthful by the said Senior Police Officer in the course of verification. These are the built in measures provided by the law laid down in the case of Phulwari Pathak (Supra) so that the Detaining Authority has before it the material to come to the conclusion that the detenu is a dangerous person within the meaning of Section 2(b-1) of the

MPDA Act. In Vijay Gupta's case (Supra) a Division Bench of this Court by referring to the judgment in the case of Phulwari Pathak (Supra) observed in para 6 as follows:

> "6. There remains no doubt in the light of the law laid down by the Apex Court that in camera statement of a person / witness can be utilised by the detaining authority for the purpose of arriving at subjective satisfaction for passing the order of detention. However, the Apex Court made it clear that the facts stated in the materials relied upon should be true and have a reasonable nexus with the purpose for which the order is passed. Necessary corollary, therefore is that the detaining authority must be satisfied about the truthfulness of the statements made in the in camera statements. Testing it from this touchstone, we find that neither in the detention order nor in the grounds of detention, the detaining authority has stated anything that he was satisfied about the truthfulness of the statements made in the in camera statements...."

9. Mrs.Pai, the learned APP invited our attention to the reasons furnished in passing the detention order and more particularly the following statement of the Detaining Authority in para 5(b) i.e. "After going through the proposal submitted by the Sr. Inspector of Police, Shahu Nagar Police Station and the verification of In-camera statements done by the Divisional Assistant Commissioner of Police, I have reason to believe that the incidents narrated by the witnesses in their 'in camera' statements to be true." We are not inclined to accept this statement as it is apparent that the Divisional Assistant Commissioner failed to verify regarding the truthfulness of the incidents as stated in both the in-camera statements. The learned APP, therefore, invited our attention to the affidavits filed by the Detaining Authority as well as the Asst. Commissioner of Police who had verified the said statements. The Asst. Commissioner in his affidavit has stated, "After independently enquiring with them I was satisfied about their identity and truthfulness of the incidents narrated by them as well the fear expressed by them of the detenu." In our opinion, this exercise by the Assistant Commissioner of Police

is to fill in the gaps and such a statement cannot be accepted now in support of the contentions that the verifying officer had verified about the truthfulness of the incidents. From the file we have noted that the proposal was submitted by the Deputy Commissioner of Police who again in the mechanical manner stated that the incidents were found to be truthful and in any case he was not the officer who did the verification of the witnesses whose statements were recorded in-camera. The material which was placed before the Detaining Authority along with the proposal submitted by the DCP included the in-camera statements as well and the said statements lacked the legal requirements if they were held to be supporting the order of detention on the ground that the detenu is a dangerous person as defined under the MPDA Act. The learned APP relied upon the judgment of this Court in the case of Zebunnisa Abdul Majid vs. M.N. Singh & ors. **[2001 (3) Mh.L.J. 365]** and we must note that even in that case it is clear that the ACP had recorded the verification about the truthfulness of the incident.

10. The impugned detention order is based on C.R. No.116/05 registered on 15/8/2005 with Shahu Nagar

Police Station for the offences punishable under Sections 326 and 114 of IPC and the two in-camera statements. If there is no material to accept the veracity of these in-camera statements in the absence of the verification regarding the truthfulness of the incidents, what remains is only the C.R. and that alone if taken into consideration, does not meet the requirements to call the detenu as a dangerous person. Section 3(1) of the MPDA Act states that the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained. The term "acting in any manner prejudicial to the maintenance of public order" has been defined in Section 2(a) and in our case clause (iv) thereunder is relevant and thus the said term would mean, when the detenu is engaged or is making preparation for engaging in any of his activities as a dangerous person, which affect adversely, or are likely to affect adversely, the maintenance of public order. Section 2(b-1) has defined the term "dangerous person" as a person, who either by himself or as a member or leader of a gang, habitually commits, or

attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959. Having regards to the scheme of the Act as referred to hereinabove, we are satisfied that the impugned detention order on the basis of C.R.No.116/05 and to the exclusion of the two in-camera statements "A" and "B" is unsustainable.

11. Hence this petition succeeds and the same is hereby allowed. The impugned detention order is hereby quashed and set aside. Rule is made absolute accordingly. The detenu - Shri Mohamed Salim s/o. Haji Hamja Shaikh @ Kalya Salim be released forthwith unless required in any other case.

(NARESH H. PATIL,J.) (B.H.MARLAPALLE